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OFFICE OF THE
EXECUTIVE SECRETARY

May 28, 1999

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Petition of NEXTLINK Tennessee, L.L.C. for Arbitration of an Interconnection
Agreement with BellSouth Telecommunications, Inc.
Docket No. 98-00123

Dear Mr. Waddell:

Enclosed are the original and thirteen (13) copies of NEXTLINK Tennessee, Inc.'s
Petition for Reconsideration in the above-captioned proceeding.

A copy is being served on counsel of record via U.S. Mail.

Sincerely,

Russell D. Gill
Manager - Regulatory Affairs

Enclosures

cc: Mr. Guy M. Hicks, Esquire

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IN RE: PETITION OF NEXTLINK)	
TENNESSEE, L.L.C. FOR ARBITRATION OF)	Docket. No. 98-00123
INTERCONNECTION WITH BELL SOUTH)	
TELECOMMUNICATIONS, INC.)	NEXTLINK PETITION FOR
)	RECONSIDERATION

I. STATEMENT OF FACTS

NEXTLINK PETITION FOR RECONSIDERATION - 1
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1 of the Act requires a state commission to resolve an arbitration within nine months after the date
2 on which the incumbent local exchange company ("LEC") received the request for negotiation,
3 but NEXTLINK and BellSouth voluntarily extended this statutory time limit until November 20,
4 1998. The TRA held a public hearing on August 24 and 25, 1998. Following review of post-
5 hearing briefs, the TRA issued its oral ruling on October 6, 1998. On January 25, 1999, the
6 Supreme Court issued its decision in AT&T Corp. On May 18, 1999, the TRA issued its written
7 decision on NEXTLINK's petition for arbitration, explaining in a footnote that it did not
8 consider the ruling in AT&T Corp when drafting its final order.

9 II. THE SUPREME COURT DECISION IN AT&T CORP.

10 The Act was designed to open monopoly local telephone markets to competition as
11 quickly as possible and represented a sweeping change to telephone regulation when it was
12 enacted in 1996. The Act directed the FCC to adopt rules implementing the requirements of
13 Section 251 within six months of its enactment, and the FCC issued those rules on August 8,
14 1996. In re Implementation of the Local Competition Provisions in the Telecommunications Act
15 of 1996, First Report & Order, 11 FCC Rcd. 15499 (1996) ("Local Competition Order"). The
16 FCC's rules included numerous regulations implementing the network element requirements of
17 Section 251(c)(3), the pricing requirements of Section 252(d) and the collocation requirements of
18 Section 251(c)(6).

19 Incumbent LECs (including BellSouth) and some state regulatory commissions appealed
20 the Local Competition Order, and their petitions were consolidated in the Court of Appeals for
21 the Eighth Circuit as Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997) ("Iowa Utilities
22 Bd. II"). The Eighth Circuit set aside a substantial portion of the FCC's rules on jurisdictional
23 grounds, including the FCC's pricing rules. Id. at 753-807. The Eighth Circuit held that the FCC
24 had improperly asserted authority over local telecommunications services that the Act reserved
25 to the states.

26 The Federal Government and numerous other parties appealed the Eighth Circuit's

1 decision to the Supreme Court, which issued its ruling in AT&T Corp. on January 25, 1999. In
2 this landmark decision, the Court largely overturned the Eighth Circuit's decision. In so doing,
3 the Court held that the FCC had jurisdiction to issue regulations concerning the rates that
4 incumbent LECs may charge for interconnection, unbundled network elements, and the resale of
5 telecommunications services, and that the FCC acted properly in prohibiting incumbent LECs
6 from separating network elements that currently are combined in their networks. 47 C.F.R. §
7 51.315(b).¹ The Court also vacated 47 C.F.R. § 51.319 -- which established a list of seven
8 network elements that incumbent LECs must make available to new entrants -- and affirmed the
9 validity of certain other rules that the Eighth Circuit upheld. The net effect of these
10 determinations was that nearly all of the FCC's rules and regulations implementing the Act are
11 valid.

12 The case is now back before the Eighth Circuit for proceedings consistent with the
13 Supreme Court's decision. These proceedings include the following: (1) requests to remand
14 Rule 317 (relating to state commission authority over unbundled elements under the Act) in light
15 of the remand of Rule 319; (2) requests for reconsideration of the Eighth Circuit's vacation of
16 Rules 315 (c) through (f) (relating to requests for new combinations and higher quality) in light
17 of the Supreme Court's reinstatement of Rule 315(b) on existing combinations of network
18 elements; and (3) consideration of the substantive merits of the appeals of the FCC's pricing
19 rules.

21 ¹ These rules are set forth in the FCC's Local Competition Order and its implementing
22 regulations, codified in Title 47 of the Code of Federal Regulations. The numerous challenges to
23 this rulemaking were consolidated in the United States Court of Appeals for the Eighth Circuit.
24 The Eighth Circuit initially stayed, pending final review, the pricing provisions and "pick and
25 choose" rule contained in the Local Competition Order. Iowa Utils. Bd. v. FCC, 109 F.3d 418
26 (8th Cir. 1996) ("Iowa Utils. Bd. I"). Subsequently, in Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th
Cir. 1997) ("Iowa Utils. Bd. II"), the Eighth Circuit vacated some of the provisions contained in
the Local Competition Order, including the FCC's pricing rules, but explicitly declined to
invalidate the remaining provisions. Id. at 819. (The specific provisions vacated by the Eighth
Circuit are enumerated in footnote 39 of Iowa Utils. Bd. II, 120 F.3d at 819 n.39.)

III. STANDARDS FOR RECONSIDERATION

“Any party, within ten (10) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested.” T.C.A. § 4-5-317(a). Such petition for reconsideration must be based on (a) a material error of law committed by the Authority; (b) a material error of fact committed by the Authority; or the discovery of new evidence sufficiently strong to reverse or modify the Authority’s order, and which could not have been previously discovered by due diligence. Tenn. Stat. § 65-2-116. NEXTLINK petitions the TRA for reconsideration of Issues 3, 4, and 12 in the First Order on the basis of material errors of law committed by the Authority.

The TRA recognized that the Supreme Court’s decision in AT&T Corp. “may in fact impact some of the issues herein” but stated that the disposition of the disputed issues reflects only “the decisions and opinions of the Arbitrators at the time of deliberation” on October 6, 1998. First Order at 1 n.1. This decision is a material error of law. The TRA speaks through its written orders, and the First Order was issued on May 18, 1999.² The TRA’s disposition of the disputed issues, therefore, must reflect the law as of May 18, 1999, not October 6, 1998. The TRA recognized this principle in a recent proceeding in which the TRA addressed motions for reconsideration of a decision that did not address the Supreme Court’s decision in AT&T Corp.:

The Supreme Court’s decision has, of course, resulted in clarification of certain aspects of the FCC’s order, 96-325, CC Docket No. 96-98. The same decision has also resulted in the necessity for the FCC to take additional actions which as of today have not been completed.

I would like to state at the outset of our deliberations that it is my opinion that we deliberate all issues placed before us based

² As the State courts have recognized, the TRA’s oral deliberations are nothing more than informal public discussion that need not even be recorded in most instances, much less entitled to consideration as a final agency order. South Central Bell Tel.Co. v. Tennessee Public Serv. Comm’n, 579 S.W.2d 429, 434 (Tenn. Ct. App. 1979); see generally Sparkle Laundry & Cleaners, Inc. v. McKinney, 595 S.W.2d 88, 93 (Tenn Ct. App. 1979), (“A Court speaks only through its written judgments, duly entered upon its minutes. Therefore no oral pronouncement is of any effect unless and until made a part of a written judgment duly entered.”).

on the Supreme Court's January 25, 1999, decision and the evidentiary record as it currently exists in this docket.

In re: Petition of BellSouth Telecommunications, Inc., to Convene a Contested Case Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements, Docket No. 97-01262, Transcript of Directors' Conference at 9 (April 20, 1999) (Chairman Malone); see id. at 10 (other Directors concurring).

The TRA similarly must resolve the disputed issues between NEXTLINK and BellSouth in this arbitration based on the Supreme Court's decision in AT&T Corp. As discussed below, that decision, at a minimum, reinstates the FCC rule requiring that BellSouth provide existing combinations of unbundled network elements upon request, which the First Order fails to require. The Supreme Court's decision affirming the jurisdiction of the FCC also highlights the nondiscrimination and pricing provisions of the Act, which preclude the TRA from requiring that NEXTLINK use a third party to access unbundled network elements or pay BellSouth a "recombination" charge that does not comply with the Act. NEXTLINK, therefore, petitions the TRA to reconsider its First Order to correct these material errors of law.

IV. THE PROVISIONS OF THE FIRST ORDER GOVERNING ACCESS TO UNBUNDLED NETWORK ELEMENTS CONFLICT WITH FEDERAL LAW.

The Act requires that BellSouth provide NEXTLINK and other competitors, upon request, with access to unbundled network elements ("UNEs") "at any technically feasible point" and "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."³ NEXTLINK requested just such access from BellSouth in Issues 3, 4, and 12 presented to the TRA for resolution. First, NEXTLINK contended that access to DCS, extended loops, or loops served by RSUs does not constitute combination. Second, NEXTLINK argued that, even if such access is considered access to combinations, NEXTLINK proposed that BellSouth allow NEXTLINK direct access to make those combinations itself, or that BellSouth make any necessary combination of UNEs and that BellSouth provide such

³ 47 U.S.C. § 251(c)(3).

1 combinations at cost-based rates. The First Order rejected NEXTLINK's proposals, determining
2 that (1) access to DCS, extended loops, and loops served by RSUs were combinations; (2)
3 BellSouth is not required to provide combinations of UNEs and may provide NEXTLINK with
4 indirect access to UNEs through an independent third party for combining UNEs, including for
5 provisioning of DCS, extended loops, and loops served by remote switching units, in partial
6 resolution of Issues 3, 4, and 12; (3) DCS is a separate element that NEXTLINK may obtain as
7 part of an existing BellSouth retail service or as a combination with transport at BellSouth's
8 discretion in partial resolution of Issue 3; and (4) BellSouth may charge NEXTLINK a
9 "recombination" charge for combining UNEs that need not comply with the pricing requirements
10 of the Act in partial resolution of Issues 3, 4, and 12.

11 These provisions of the First Order are inconsistent with federal law. Clearly, under the
12 Act and the FCC's current rules, DCS and loops served by RSUs are not combinations.
13 Moreover, even if these are determined to be combinations, the Act, the FCC, and the reviewing
14 federal courts have concluded that UNEs currently provided by incumbent "LECs" in their
15 networks must be provided in combination, and, for UNEs not currently provided in
16 combination, the only alternative to requiring incumbent "LECs" to combine UNEs is to allow
17 direct access to the requesting carrier to make the combinations. Nothing in federal law
18 authorizes the TRA to require competing local exchange companies ("CLECs") to incur the
19 additional expense and delay of hiring a third party to obtain such access. The FCC has also
20 determined that DCS is part of unbundled transport. Moreover, the evidence presented by
21 NEXTLINK in this proceeding demonstrates that extended loops and loops served by RSUs are
22 part of the same unbundled network element. BellSouth has represented that it will supply all
23 UNEs designated by the FCC in Rule 319 pending conclusion of the FCC reconsideration of its
24 UNE designation required by the Supreme Court. The Act and the FCC rules, moreover, require
25 nondiscriminatory access to UNEs, which necessarily requires that BellSouth charge no more
26 than its forward-looking costs to provision UNEs in combinations. The TRA's failure to comply

1 with these requirements of federal law render the First Order contrary to law. Accordingly, the
2 TRA should reconsider these provisions of the First Order and modify its decision to conform to
3 the Act, the FCC rules, and Supreme Court precedent.

4
5 **ISSUE 3(a) Must NEXTLINK Be Collocated at BellSouth's Premises to Obtain Access to
6 BellSouth's Digital Cross-Connect Systems ("DCS")?**

7 **A. Unbundled Transport Includes the Functionality of DCS Equipment.**

8 The TRA's resolution of Issue 3(a) – NEXTLINK's access to BellSouth's digital cross-
9 connect systems ("DCS") – is based on the premise that DCS is an element distinct from
10 unbundled transport. This premise is devoid of legal or factual support and accordingly is
11 inconsistent with federal law. Even if DCS could be considered a separate element, the TRA
12 failed to acknowledge that DCS and transport are currently combined in BellSouth's network
13 and must be provided to NEXTLINK in the same fashion as required by the FCC rules reinstated
14 by the Supreme Court. Accordingly, the resolution of this issue in the First Order is based on an
15 error of law and should be corrected.

16 DCS facilities are equipment placed as part of a transport route that can either concentrate
17 traffic from several transport links in a single link or reroute such traffic into one or more
18 directions. The FCC thus has defined the unbundled network element ("UNE") of "transport" to
19 include the functionality provided by the incumbent LEC's DCS.⁴ The Supreme Court vacated
20 FCC Rule 319, which defines transport and other UNEs that BellSouth and other incumbent
21 LECs must provide to requesting carriers, but BellSouth and the other incumbent LECs have
22 represented to the FCC that they will continue to honor their obligations to provide the UNEs
23 specified by the FCC until the FCC has completed its remand proceedings. Even if the TRA
24 were to allow BellSouth to disavow that representation, BellSouth currently provides, or is
25 obligated to provide, unbundled transport as defined by the FCC under TRA-approved

26 ⁴ 47 C.F.R. § 51.319(d)(2)(iv). See Local Competition Order, 11 FCC Rcd at 15712-20, ¶¶ 444, 445.

1 agreements with other competitors, including AT&T and MCI. See MCI Metro/BellSouth
2 Interconnection Agreement, Docket No. 97-00445, Attachment 3 at 29-30; AGREEMENT
3 between BellSouth Telecommunications, Inc. and AT&T Communications of the South Central
4 States, Docket No. 96-01152, Attachment 2 at 37. The TRA cannot authorize BellSouth to
5 discriminate against NEXTLINK by refusing to provide the same UNEs that BellSouth is
6 providing or has agreed to provide to other carriers.

7 The TRA nevertheless accepted BellSouth's assertion that DCS is a separate network
8 element even while expressly noting that DCS is not included among the UNEs that BellSouth
9 has specified in its SGAT. First Order at 4. The TRA made no attempt to designate DCS as a
10 separate UNE pursuant to FCC Rule 317, which authorizes state commission designation of
11 UNEs and which the FCC and other parties have asked the Eighth Circuit for the opportunity to
12 reconsider along with Rule 319. No legal authority, therefore, supports the designation of DCS
13 as a separate UNE.

14 The result is that the entire discussion of DCS as part of a "combination" with transport is
15 inaccurate and inconsistent with federal law. DCS is included in the transport UNE and should
16 be treated accordingly. Even if DCS could be considered a separate element – which on the
17 record before the TRA it cannot – federal law unequivocally requires BellSouth to provide that
18 element as part of any existing combination of UNEs in its network upon NEXTLINK's
19 request.⁵ The First Order fails to implement this requirement, permitting BellSouth unilateral
20 discretion in determining whether, and at what price, BellSouth will provide such a combination
21 to NEXTLINK.

22 The TRA's resolution of this aspect of Issue 3(a) is contrary to the Act, FCC rules, and
23 Supreme Court precedent. The TRA, therefore, should reconsider these provisions of the First
24 Order and conclude that BellSouth must provide NEXTLINK with access to DCS as part of the
25

26 ⁵ 47 C.F.R. § 51.315(b); AT&T Corp., 119 S. Ct. at .736-38

1 UNE of unbundled transport at the interim rates established for that element until the TRA has
2 established "permanent" rates as a result of its generic pricing proceeding.

3 **B. The Requirement That NEXTLINK Must Access DCS By Purchasing**
4 **"Flexserv" Service is Contrary to Law.**

5 BellSouth contended that the presence of its "Flexserv" service relieved it of its
6 obligations to provide unbundled transport with DCS functionality. The TRA agreed, without
7 analysis, that the availability of the "Flexserv" service would be sufficient for BellSouth to meet
8 its obligations with respect to DCS' routing and managing capabilities. First Order at 7-8. This
9 decision is contrary to the Act, the FCC rules, and the Supreme Court's decision in AT&T Corp.

10 BellSouth cannot evade its obligations to offer UNEs because it offers a retail service that
11 is similar to the functionality provided by a particular UNE. Nothing in the Act or the FCC rules
12 requires incumbent LECs to provide UNEs only if they do not offer a comparable retail service.
13 To the contrary, the FCC rule requiring incumbent LECs to provide existing combinations of
14 UNEs necessarily means that requesting carriers can obtain UNE combinations that are used to
15 provide retail services. Indeed, BellSouth and other incumbent LECs opposed this FCC rule
16 because they claimed that "it not only eviscerates the distinction between resale and unbundled
17 access, but that it also amounts to Government-sanctioned regulatory arbitrage."⁶ The Supreme
18 Court rejected that position, finding "we cannot say that Rule 315(b) unreasonably interprets the
19 statute."⁷ The TRA's determination that NEXTLINK may obtain DCS only as part of a retail
20 BellSouth service thus is insupportable under the Supreme Court's decision and reinstated FCC
21 rule.

22 Whether a UNE or combination of UNEs is equivalent to a retail service is irrelevant, and
23 the TRA's resolution of Issue 3(a) to the contrary is inconsistent with federal law. Accordingly,
24 the TRA should reconsider its determination that NEXTLINK may access DCS only as part of a
25 retail service obtained from BellSouth and should correct its error of law, requiring BellSouth to

26 ⁶ AT&T Corp., 119 S. Ct. at .737

1 provide DCS to NEXTLINK as part of the UNE of unbundled transport at the UNE rate
2 established by the TRA.

3
4 **C. The TRA's Requirement That NEXTLINK Use a Third Party Vendor to
Access UNEs is Contrary to the Act.**

5 The TRA determined that NEXTLINK may access and combine UNEs provided by
6 BellSouth only through an independent third party vendor. First Order at 7. At least with
7 respect to UNEs currently combined in BellSouth's network, this requirement is flatly contrary
8 to the FCC rule mandating that BellSouth provide such combinations to requesting carriers that
9 was reinstated by the Supreme Court.⁸ The TRA's decision, therefore, is inconsistent with the
10 Act, valid and binding FCC rules, and the Supreme Court's decision in AT&T Corp. The FCC
11 requirement that incumbent LECs also combine UNEs that are not currently combined in their
12 networks remains at issue before the Eighth Circuit on remand from the Supreme Court, but even
13 pending the Eighth Circuit's determination, the TRA's decision on this issue erects an additional
14 barrier to entry and imposes a discriminatory burden on NEXTLINK in violation of federal law.

15 The Act requires BellSouth to provide "nondiscriminatory access to network elements on
16 an unbundled basis at any technically feasible point on rates, terms, and conditions that are just,
17 reasonable and nondiscriminatory in accordance with the terms and conditions of the
18 [interconnection] agreement and the requirements of this section and section 252."⁹ The Act also
19 contemplates the combination of network elements, explaining that an incumbent LEC "shall
20 provide such unbundled network elements in a manner that allows requesting carriers to combine
21 such elements in order to provide such telecommunications service."¹⁰ The plain language of the
22 Act thus requires BellSouth to provide NEXTLINK with access to UNEs that are not currently
23 combined sufficient to enable NEXTLINK to combine those UNEs. NEXTLINK's proposal to
24

25 ⁷ Id.

⁸ 47 C.F.R. § 51.315(b); AT&T Corp., 119 S. Ct. at 736-38

⁹ 47 U.S.C. § 251(c)(3).

26 ¹⁰ Id.

1 give BellSouth the alternative of allowing direct access or combining UNEs on behalf of
2 NEXTLINK satisfies this statutory requirement. The Utah Public Service Commission agreed,
3 requiring in a recently concluded arbitration between NEXTLINK Utah and U S WEST
4 Communications, Inc., that the incumbent LEC combine UNEs at the CLEC's request. A copy
5 of the Utah Commission's order is attached.

6 The TRA's requirement that NEXTLINK access UNEs only through a third party, in
7 contrast, is inconsistent with the statutory language and FCC and federal court interpretation of
8 that language. The FCC recognized that in order to combine many of the network elements that
9 it had identified, CLECs would need direct physical access to the incumbent LEC's central
10 office. The FCC concluded, however, that it would be impracticable for new entrants to combine
11 network elements without the assistance of the incumbent LEC.¹¹ The FCC, therefore,
12 interpreted this section of the Act to require incumbent LECs to provide CLECs with the
13 combination of elements that CLECs request.¹² BellSouth and the other incumbent LECs
14 challenged the FCC's requirement in their appeal of the Local Competition Order. The Eighth
15 Circuit invalidated the FCC rule but observed that "the fact the [incumbent LECs] object to this
16 rule indicates to us that they would rather allow entrants access to their networks than have to
17 rebundle the unbundled elements for them."¹³ The Supreme Court addressed this issue only in
18 the context of providing existing combinations of UNEs, but concluded that the FCC acted
19 within its statutory authority when it required incumbent LECs to provide UNEs that are
20 currently combined, rather than allowing the incumbents to impose anticompetitive and wasteful
21 reconnection costs on new entrants.¹⁴

22 At a minimum, therefore, the federal courts have recognized that the alternative to
23 requiring incumbent LECs to recombine network elements on behalf of requesting carriers is to
24

25 ¹¹ Local Competition Order, 11 FCC Rcd. at 15647, ¶ 294.

26 ¹² Id.

¹³ Iowa Utilities Board, 120 F.3d at 813 (emphasis added).

¹⁴ AT&T Corp., 119 S. Ct. at 737-38.

1 allow those carriers access to the incumbent LEC's network to recombine UNEs for themselves.
2 The Supreme Court affirmed, at least in part, the FCC's additional step of actually requiring
3 incumbent LECs to provide combinations of elements, realizing that incumbent LECs do not
4 really prefer providing direct access but resist providing combinations of UNEs as a means of
5 thwarting competitive entry using UNEs. The First Order disregards these teachings and allows
6 BellSouth to have its cake and eat it too, authorizing BellSouth to refuse to provide combinations
7 of, or direct access to, its UNEs and to impose anticompetitive and wasteful costs on
8 NEXTLINK to hire a third party to obtain such access.

9 Neither party proposed or even addressed using third parties to access UNEs, and the
10 TRA's unilateral imposition of this requirement deprived NEXTLINK of any opportunity to
11 address the inviability of this solution, as well as its discriminatory and anticompetitive impacts.
12 The effect of the TRA's requirement is that NEXTLINK must engage another company's
13 employees to work on NEXTLINK's behalf. NEXTLINK, however, already employs personnel
14 to undertake such work, which means that NEXTLINK must incur significant additional expense
15 to hire, administer, and coordinate third parties to perform functions that NEXTLINK personnel
16 can and do perform. In addition to the unnecessary expense, the TRA's requirement would
17 severely impair NEXTLINK's ability to obtain timely service from BellSouth. A third party
18 would be required every time BellSouth provides the UNEs at issue to NEXTLINK, possibly as
19 many as several times a day in each market. NEXTLINK thus would have to coordinate the
20 schedule and activities not just of its own and BellSouth personnel, but a third party employee as
21 well. The TRA is already aware of the problems NEXTLINK and other competitors have
22 experienced with coordinating service and facility transfers from BellSouth to the CLEC.
23 Adding a third party to this process would vastly complicate and further delay these transfers,
24 substantially increasing the existing service quality problems and impeding the development of
25 effective local exchange competition in Tennessee.

26

1 Such a third party access requirement is also blatantly discriminatory. Nothing in the
2 record demonstrates that BellSouth must rely solely on third parties to access its network
3 elements. Requiring NEXTLINK alone to access or combine network elements using a third
4 party vendor thus requires NEXTLINK to accept discriminatory access to UNEs in violation of
5 the Act. NEXTLINK would be compelled to incur the administrative burden, additional
6 expense, and provisioning delays of using the services of a third party each time NEXTLINK
7 seeks to combine UNEs. BellSouth is subject to no such requirement but is free to use its own
8 employees to access the same UNEs. On its face, the TRA's novel requirement that NEXTLINK
9 employ third parties to combine UNEs is inconsistent with the nondiscrimination requirements of
10 federal law.

11 The TRA purports to justify its solution as necessary to address BellSouth's security
12 concerns, but NEXTLINK's proposal – to provide BellSouth with the option of allowing
13 NEXTLINK to make the combinations or having BellSouth make those combinations on behalf
14 of NEXTLINK – fully addresses any legitimate security concerns and ensures that NEXTLINK
15 receives the same access to UNEs that BellSouth provides to itself. The FCC in the related
16 context of physical collocation in incumbent LEC central offices, rejected the idea that the
17 incumbents may impose greater burdens on competitors in the name of "security" by requiring
18 physical segregation of central office space. The FCC concluded "that incumbent LECs may
19 impose security arrangements that are as stringent as the security arrangements that incumbent
20 LECs maintain at their own premises . . . but may not impose more stringent security
21 requirements than these." In re Deployment of Wireline Services Offering Advanced
22 Telecommunications Capability, CC Docket No. 98-147, FCC 99-48, First Report and Order ¶
23 47 (Mar. 31, 1999). Similarly here, the TRA's requirement that NEXTLINK use third parties to
24 access UNEs subjects NEXTLINK to more stringent security requirements than BellSouth
25 imposes on itself in violation of the Act.

26

1 The First Order's resolution of this aspect of Issue 3(a) is inconsistent with the Act, FCC
2 rules, and Supreme Court precedent. The TRA, therefore, should reconsider this issue and
3 correct this error of law by requiring that BellSouth provide existing combinations of UNEs and
4 either combine UNEs that currently are not combined upon NEXTLINK's request or allow
5 NEXTLINK personnel direct access to those UNEs to make the combinations itself.

6
7 **ISSUE 3(b) Must NEXTLINK Pay a Recombination Charge ("Glue Charge") and
Execute a Separate Agreement to Obtain Access to BellSouth's DCS?**

8 **Requiring NEXTLINK to Pay a Non-Cost-Based Recombination or "Glue" Charge
9 for Accessing the DCS Facilities Is Contrary to Law.**

10 The TRA concluded that "to the extent BellSouth is willing to combine transport and
11 DCS for NEXTLINK, the parties should negotiate the charge that would apply to such
12 combinations, with such combinations and charges not being subject to the requirements of the
13 1996 Act." First Order at 9. This conclusion is contrary to law. As discussed above, DCS
14 functionality is part of the element of unbundled transport that BellSouth is required to provide
15 to NEXTLINK at cost-based rates established by the TRA in conformance with the Act and FCC
16 rules. With respect to legitimate combinations of UNEs, the Act and FCC rules preclude
17 authorizing BellSouth to set its own price for providing it in combination with unbundled
18 transport.

19 The TRA permits BellSouth unilaterally to impose a "recombination" charge for any
20 combination performed by BellSouth, "with the combinations and charges not being subject to
21 the requirements of the 1996 Act." First Order at 14. DCS is part of unbundled transport and
22 thus there is no "combination" to which BellSouth could legally impose an additional
23 "recombination" charge. Even if provision of DCS could be deemed a recombination, any
24 recombination charge applied to providing currently combined UNEs also cannot be reconciled
25 with the Act and FCC rules. The FCC requires BellSouth to provide requesting carriers with
26 currently combined UNEs, as discussed above, and BellSouth did not – and could not – provide

1 any evidence that it incurs a cost for "recombining" UNEs that are already combined. The Act
2 permits recovery only of the forward-looking costs of providing UNEs, and BellSouth cannot
3 impose a charge for which it incurs no cost. The TRA's decision fails to recognize this
4 requirement and accordingly is inconsistent with federal law.

5 The Act governs BellSouth's provisioning of UNEs, both individually and in
6 combinations, including the prices BellSouth may lawfully impose. BellSouth must provide
7 nondiscriminatory access to UNEs, i.e., the same access BellSouth provides to itself, whether
8 BellSouth combines UNEs or permits direct access sufficient to enable requesting carriers to
9 combine UNEs. Direct access is not equivalent to BellSouth making the combination if the
10 requesting carrier must incur costs in excess of the costs BellSouth incurs to perform the
11 combination. The Act's nondiscrimination requirement, therefore, requires that any charge an
12 incumbent LEC imposes to combine UNEs be based on the forward-looking costs the incumbent
13 LEC reasonably incurs to make the combination.

14 The TRA's grant of unlimited discretion to BellSouth to impose a "recombination"
15 charge not only is inapplicable to the provisioning of DCS, but it improperly abdicates the
16 TRA's responsibilities to establish cost-based rates for access to UNEs and to implement the
17 nondiscrimination requirements of the Act. Accordingly, the TRA should reconsider Issue 3(b)
18 and correct the error of law in the First Order by prohibiting BellSouth from imposing any
19 "recombination" charge that is not cost-based and established by the TRA in conformance with
20 the Act and FCC rules.

21
22 **ISSUE 4(b): Must NEXTLINK Be Collocated With BellSouth in Order to Recombine
Unbundled Network Elements?**

23
24 **ISSUE 4(c): Are There Any Technically Feasible Methods That BellSouth Must Offer to
25 Permit NEXTLINK to Recombine Unbundled Network Elements Where It Is
26 Not Collocated?**

1 **Requiring NEXTLINK to Use a Third Party to Recombine UNEs Is Inconsistent**
2 **With the Requirements of Federal Law.**

3 As the TRA recognized, the “reasoning in resolving Issue 3(a) applies equally to Issues
4 4(b) and (c).” First Order at 11. The TRA’s requirement that NEXTLINK use a third party to
5 recombine UNEs violates the FCC rules reinstated by the Supreme Court in AT&T Corp., would
6 impose wasteful, anticompetitive, and unnecessary expense and delay on NEXTLINK and its
7 existing and potential customers, and would be discriminatory in violation of the Act.
8 Accordingly, the TRA should reconsider its resolution of Issues 4(b) and (c) and require that
9 BellSouth provide existing combinations of UNEs to NEXTLINK and either recombine UNEs
10 that are not already combined or provide NEXTLINK with direct access to those UNEs to
11 perform any required combinations itself.

12 **ISSUE 4(d): What Terms and Conditions Should Govern the Recombination Process if**
13 **BellSouth Chooses to Recombine Unbundled Network Elements Itself?**

14 **ISSUE 4(e): For What Functions, if Any, May BellSouth Impose a “Glue Charge”?**

15 **ISSUE 4(f): Must BellSouth Provide Transport and a Loop Together? If so, Under What**
16 **Terms and Conditions?**

17 **BellSouth Must Provide Existing Combinations of UNEs and Direct Access to**
18 **Uncombined UNEs and May Charge No More Than TELRIC-Based Rates for**
19 **Recombining UNEs, Including Loop and Transport.**

20 The issues of recombining UNEs and imposition of a “recombination” charge that fails to
21 comply with the Act are the same in Issue 4(d)-(f) as they are in Issue 3. BellSouth must provide
22 NEXTLINK with existing combinations of UNEs at the TELRIC-based rates for those UNEs
23 without any additional charge. If BellSouth combines previously uncombined UNEs for
24 NEXTLINK rather than allowing NEXTLINK direct access to those UNEs to combine itself, any
25 “recombination” charge may not exceed the forward-looking costs of doing the work necessary
26 to make the combinations.

 The record reflects that extended loops are not combinations, or, at the very least, are
combinations currently provided by BellSouth in its network. In any event, BellSouth must

1 provide NEXTLINK with loop and transport used to create an extended loop. The TRA
2 recognized that BellSouth acknowledges that it provides such facilities to end-users as
3 BellSouth's private line or special access services. First Order at 13. If NEXTLINK requests an
4 extended loop to provide service to an end-user customer, BellSouth must provide it. Any
5 charge BellSouth is allowed to impose for providing extended loops must be based on forward-
6 looking costs in compliance with Section 252(d) of the Act. The TRA's resolution of Issue 4(d)-
7 (f) to the contrary is based on a material error of law that should be reconsidered and corrected.

8
9 **ISSUE 12(a): How Should BellSouth Provide Access to Loops Served by BellSouth's
Remote Switches?**

10
11 **ISSUE 12(b): Must NEXTLINK Be Collocated at a BellSouth Structure Containing a
Remote Switch to Obtain Access to Loops Served Off That Remote?**

12
13 **ISSUE 12(c): Must NEXTLINK Be Collocated at a BellSouth Structure Containing the
Remote Switch Even When NEXTLINK Is Collocated at That Remote
14 Switch's Host Central Office?**

15 **ISSUE 12(d): If Collocation Is Required, How Must BellSouth Provide Access to Loops
Served by a Remote Switch When Collocation Is Impossible Due to Space or
16 Other Limitations?**

17 **BellSouth Must Provide Existing Combinations of UNEs and Direct Access to
Uncombined UNEs and May Charge No More Than TELRIC-Based Rates for
18 Recombining UNEs, Including Loops Served by Remote Switches.**

19 The issues of recombining UNEs and imposition of a "recombination" charge that
20 fails to comply with the Act are the same in Issue 12(a)-(d) as they are in Issue 3. Like DCS is
21 part of transport, the portion of an unbundled loop that extends from the RSU is simply part of a
22 UNE, the loop. BellSouth must provide NEXTLINK with access to loops served by RSUs at the
23 TELRIC-based rates for those UNEs without any additional charge. Any charge BellSouth is
24 allowed to impose for providing loops served by RSUs must be based on forward-looking costs
25 in compliance with Section 252(d) of the Act. The TRA's resolution of Issue 12(d)-(f) to the
26 contrary is based on a material error of law that should be reconsidered and corrected.

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V. CONCLUSION

For the foregoing reasons, the TRA should reconsider its First Order and adopt NEXTLINK's proposals to require BellSouth (1) to provide unbundled access to DCS as part of the element of unbundled transport and unbundled access to extended loops and loops served by RSUs; (2) to provide combinations of UNEs to the extent NEXTLINK requests access to UNEs that are already combined in BellSouth's network; (3) to allow NEXTLINK direct access to BellSouth's network so that NEXTLINK can combine UNEs not currently combined or to provide those UNEs in combination for NEXTLINK; and (4) where BellSouth performs such recombination, not to impose a recombination or glue charge that has not been established by the TRA in compliance with the requirements of Section 252(d) of the Act .

DATED this 28th day of May, 1999.

Attorneys for NEXTLINK Tennessee, L.L.C.

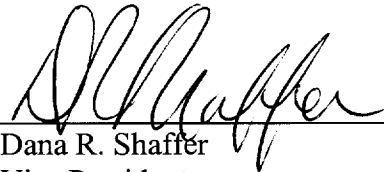
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CERTIFICATE OF SERVICE

I, Dana R. Shaffer, certify that a true and exact copy of the foregoing was served upon the following counsel of record, via United States Mail, postage prepaid, on this the 20th day of May, 1999.



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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of NEXTLINK)
OF UTAH, INC., for Arbitration of a)
Second Interconnection Agreement with)
US WEST COMMUNICATIONS, INC.,)
Pursuant to 47 U.S.C. § 252)

DOCKET NO. 98-2208-03

ARBITRATION AWARD

ISSUED: March 23, 1998

SYNOPSIS

The Commission announced its award in favor of Nextlink on the issues of alternate routing of SS7 access, extended loops, and SPOT frame access limitation; it announced its award in favor of US West Communications, Inc., on the issues of affording access to customer rate information and access to AIN triggers.

Appearances:

Daniel M. Waggoner and
Greg Kopta

For

Nextlink, Utah, Inc.

Gregory B. Monson and
Mark E. Hindley

“

US West Communications, Inc.

By The Commission:

PROCEDURAL HISTORY

Pursuant to notice duly served, the above-captioned matter came on regularly for hearing January 20, 1999. Evidence was offered and received. Thereafter briefs were filed, pursuant to a stipulated extension of time for decision, and the matter submitted February 23, 1999. The Administrative Law Judge, having been fully advised in the matter, now enters the

following proposed arbitration award:

PRELIMINARY REMARKS

This is denominated an arbitration proceeding between Nextlink Utah, Inc., (Nextlink) and US West Communications, Inc. (USWC), both telephone corporations certificated by this Commission. The parties are, respectively, a Competing Local Exchange Carrier (CLEC) and the Incumbent (existing) Local Exchange Carrier (ILEC).

If this were an arbitration proceeding conducted in accordance with American Arbitration Association rules, we would simply announce our award with no further explanation — however, Congress has created a strange hybrid proceeding subject to more extensive review than that normally accorded arbitration awards. Accordingly, we will disclose our reasoning in making the award, but we will omit our customary separate findings of fact and conclusions of law and simply issue our opinion.¹

At the time of this writing, there are five unresolved issues which the parties have submitted for arbitration, viz: Nextlink alternate route access to USWC's SS7 signaling network; SPOT frame and Combination of Unbundled Network Elements; Extended Loop; Nextlink Access to AIN triggers; and USWC's Providing rates on Customer Service Request. We will

¹In the interest of completing this Order within the time allotted, in presenting the parties' positions, the Administrative Law Judge has quoted extensively from the parties' briefs without full attribution. The Administrative Law Judge trusts the parties counsel will forgive him this acknowledged plagiarism.

discuss the issues in that order.

NEXTLINK ACCESS TO USWC'S SS7 SIGNALING NETWORK

A. Background

Signal System 7 (SS7) is a network auxiliary to the main telephone voice and data network. SS7's function is to manage and control the voice and data network. To quote Nextlink's post-hearing brief:

[SS7] performs an integral role in network supervision, conveying information about call routing, bill verification, and network management; it also supports telecommunications tasks ranging from dial tone to accessing voice mail. There is no dispute that access to SS7 is essential to the provision of telecommunications service.

Without access to a SS7 network, a Local Exchange Carrier (LEC) is limited to its own network — that is it cannot complete outgoing calls to, or incoming calls from, another LEC's network.²

US WEST attempts to provide SS7 backup capability through the provision of A-Links and Signaling Transfer Points (STP) in pairs. This backup SS7 capability through A-Links and STP pairs is not always reliable. With this redundancy in place, NEXTLINK has experienced outages. For example, if a pair of A-Links lies in the same cable sheath, and that cable sheath is cut, both A-Links will go down. Thus, those pairs will not always provide NEXTLINK sufficient redundant routing. . . . US WEST's existing ability to avoid SS7-related problems goes beyond the redundancy provided through A-Link and STP pairs. If one set of US WEST's A-Links or STP's is down, US WEST can route its SS7 signaling to another set of A-Links and/or STP's in its network, such as to its regional STP's. . . . Under the current US WEST

² Prefiled Testimony of Bradley Baxter (hereafter "Baxter") at 2-4.

SS7 network configuration, NEXTLINK does not have the same ability as US WEST to reroute SS7 signaling to another set of A Links and/or an STP.³

³*Ibid.* USWC disputes, without further elaboration, that it has the extra redundancy Nextlink claims. Even if that is true, given USWC's orders of magnitude greater customer base, SS7 signal loss may not be as catastrophic for USWC as it is for Nextlink. However, as discussed hereafter, we deem that immaterial to the resolution of the dispute.

Owing to experiences in Spokane, Washington, in which failures of the SS7 link between Nextlink and USWC occasioned service outages of one and seven hours, Nextlink seeks a provision in the proposed interconnection agreement (the Agreement) for alternate SS7 routing going through an independent signaling network, operated by GTE Intelligent Network Services, Inc. (GTE INS). “If the primary SS7 routing to U S WEST broke down for some reason (or became congested), the US WEST STP and the NEXTLINK telephone switch would recognize that fact and direct SS7 signaling to follow the back-up or redundant path..”⁴

B. Positions of the Parties

1. Technical Feasibility

USWC Position: USWC concedes that the physical connection sought by Nextlink is technically feasible. Its claim of wider technical infeasibility is based on an appeal to Fear, Uncertainty, and Doubt (FUD).⁵ As a fallback position, USWC asserts that the proposed alternate SS7 network should be implemented only after standards are set by a national

⁴*Id* at 6.

⁵Although the physical connection of links or trunks is technically feasible, the ability of the two networks to communicate with one another is unknown. USWC Post-hearing Brief (hereafter “USWC Brief”) at 16.

standards-setting body such as Bellcore.⁶ Nextlink objects to such an approach as too time-consuming.⁷

Nextlink Position: Nextlink claims that beyond the physical connection capability, it has confirmed the arrangement's technical feasibility through testing by NORTEL and by discussions with other equipment vendors and SS7 signaling suppliers, including GTE Intelligent Network Services, Ericsson, Tekelec, and DSC Communications, Corp.

⁶USWC Brief at 17.

⁷Nextlink Brief at 6.

Nextlink concedes that no other carrier has as yet implemented its proposed alternate SS7 network, but asserts that both Southwestern Bell Telephone (SBC) (in Texas) and GTE (in all GTE service areas) have agreed to provide Nextlink with the requested alternate SS7 signaling arrangements. Nextlink asserts further that SBC and GTE have signed interconnection agreements for the state of Texas with Nextlink, and that in Tennessee, BellSouth has agreed to test Nextlink's alternate SS7 proposal as a settlement of an arbitration. Moreover, Nextlink asserts, if Nextlink's alternate routing proposal performs in those tests as Nextlink projects, BellSouth will implement Nextlink's proposal..⁸

2. Legal Requirements

USWC Position: USWC resists implementation of Nextlink's proposal with the assertion that such implementation is tantamount to providing Nextlink a network connection superior to USWC's own network, a requirement unsupported by Federal or State law.⁹

Nextlink Position: Nextlink ripostes that the appropriate legal standard is not a network configuration identical to that of USWC, but instead access that is "at least equal in quality" and "non-discriminatory" (under federal law) and "not lower in quality" (under Utah law). Nextlink seeks such access with its alternate routing proposal, in order to give itself the

⁸Baxter at 7-8.

same ability to protect its SS7 signal routing as USWC gives itself.¹⁰

C. Discussion

⁹USWC Brief at 19-20.

¹⁰Nextlink Brief at 7.

The United States Supreme Court has applied its imprimatur¹¹ to all of the Federal Communications Commission's (FCC) rules¹² with the exception of 47 CFR § 51.319. We are mindful that the case is on remand, raising the question whether the FCC rules, or all of them except 319, currently have the force of law.

We don't care whether they do or not.

There is a *Leitmotiv* running through recent Federal and State telecommunications legislation — namely that whatever promotes competition is good, and whatever inhibits it is, at the best, suspect. The *Leitmotiv* runs strongly through the FCC rules. We, along with the U.S. Supreme Court, believe the FCC rules embody a correct construction of the Federal legislation, and, accordingly, whether or not at this writing they constitute governing law, we are prepared to accord them considerable deference. “Technically feasible” is defined by 47 CFR § 5 as follows:

Interconnection . . . shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. *An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that*

¹¹Iowa Utilities Board, *et al*, v. FCC, __ U.S. __, 1999.

¹²47 CFR 51.

such interconnection, access, or methods would result in specific and significant adverse network reliability impacts. (Emphasis added.)

USWC's vague appeal to FUD does not, in our estimation, meet the "clear and convincing" proof standard mandated by the rules. There has not been even a suggestion that Nextlink's personnel are irresponsible dabblers, and it is obviously not in Nextlink's interest to destabilize the network. Moreover, Nextlink's readiness to implement the arrangement on a test basis provides adequate safeguards for system integrity. Accordingly, we must deem the arrangement technically feasible under applicable law.

In regard to USWC's claim that it is not required to afford Nextlink a "superior" network, 47 CFR § 51.305 provides:

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

* * *

(4) that, if so requested by a telecommunications carrier and to the extent technically feasible, *is superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection.* (Emphasis added.)

In our estimation, this language clearly negates USWC's position. We conclude

that Nextlink's proposal, and its proposed implementing language¹³ should be adopted.

SPOT FRAME AND COMBINATION OF UNBUNDLED NETWORK ELEMENTS

A. Background

US WEST proposes to require that Nextlink obtain access to all Unbundled Network Elements (UNE), or combinations thereof, through a Single Point of Termination (SPOT) frame, *i.e.*, an Intermediate Distribution Frame (IDF) between the main (COSMIC) distribution frame in a central office and the equipment in Nextlink's collocation cage. NextLink opposes this proposal, asserting that a SPOT frame introduces potential signal degradation and failure points to the Nextlink's network, creates obstacles to coordinated circuit transfers from

¹³6.7.8 The Parties will interconnect their networks using SS7 signaling as defined in GR-317 and GR-394, including ISDN User Part ("ISUP") for trunk signaling and Transaction Capabilities Application Part ("TCAP") for CLASS-based features in the interconnection of their networks. USWC shall provide A-Link connection to USWC STPs for the purpose of SS7 signaling between NEXTLINK and USWC. In addition to A-Link connectivity, USWC shall provide primary and alternate SS7 message routing between USWC and NEXTLINK. The purpose of such primary and alternate SS7 message routing is to provide and maintain the highest possible level of network reliability between the USWC and NEXTLINK interconnecting networks. All appropriate industry standards for signaling interoperability will be followed. The NEXTLINK SS7 network configuration is attached as Appendix B to this Agreement.

USWC to Nextlink, and imposes substantial additional costs to access an unbundled loop that would not be present if Nextlink accesses loops directly from the COSMIC frame. Nextlink further asserts that USWC's proposal to have various CLECs do the jumper work on a common SPOT frame further burdens CLECs' access to unbundled loops by requiring dispatch of CLEC personnel to the US WEST central office each time a loop is provisioned and by imperiling network integrity and customer service quality through allowing multiple carriers to have access to the same distribution frame.

B. Positions of the Parties

1. Technical Feasibility

USWC Position: USWC defends its proposal on the basis that the "SPOT frame has numerous benefits because it provides a single location where access to UNEs is available and it allows US WEST to aggregate CLEC demand which reduces costs for CLECs and efficiently utilizes network resources.¹⁴

Nextlink Position: Nextlink opposes the proposal as introducing additional points of failure into the network, confusing responsibility for testing and maintenance, and unnecessarily increasing Nextlink's expense. Instead, Nextlink proposes an Expanded Interconnection Channel Termination ("EICT") from the Nextlink's collocated equipment directly to the COSMIC frame.¹⁵ Nextlink notes that USWC has heretofore provided such direct

¹⁴USWC Brief at 27.

¹⁵Nextlink Brief at 10

access.

2. Legal Requirements

In its brief, USWC deals cursorily, if at all, with the SPOT frame issue *per se*, concentrating instead on issues of aggregating UNE's. Nextlink argues that the Federal Act's plain language requires interconnection at any technically feasible point,¹⁶ and USWC does not seriously argue that the interconnection Nextlink seeks is not technically feasible.

C. Discussion

As nearly as we can understand USWC's argument, its obligation to a connecting CLEC is fulfilled so long as it puts the same conditions, no matter how unreasonable or onerous, on all comers. We don't think so.

That USWC has provided access in the past as desired by Nextlink demonstrates plainly that such interconnection is technically feasible. USWC's apparent construction of the

¹⁶[ILECS have] The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

* * *

(B) *at any technically feasible point within the carrier's network*;
(C) that is *at least equal* in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
(D) *on rates, terms, and conditions that are just, reasonable, and nondiscriminatory*
47 USC 251(c)(2). (Emphasis added.)

statute clearly ignores the plain language of 47 USC 251(c)(2)(B). We do not perceive USWC's purported advantages of the SPOT frame as outweighing the disadvantages to Nextlink and similarly-situated CLEC's. It clearly renders CLEC's "second-class citizens" vis-a-vis USWC and its own use of the network.

Inasmuch as USWC's proposal is required neither by technical feasibility nor

legal considerations, Nextlink's contract language¹⁷ governing the subject matter should be

¹⁷7.1.7 Telecommunications interconnection between NEXTLINK's collocated equipment and USWC's network may be accomplished via the SPOT bay or an EICT. This element can be at the DS-3, DS-1, DS-0, or any other level in the digital hierarchy subject to network disclosure requirements of the FCC, depending on the USWC service to which it is connected.

7.5.1.4 The SPOT frame will be the location where all USWC unbundled Network Elements and USWC's equipment are terminated for combination of USWC unbundled network elements. NEXTLINK may run jumpers on the SPOT frame to make connections in three basic types of configurations:

USWC unbundled Network Elements to USWC unbundled Network Elements

USWC unbundled Network Elements to NEXTLINK's equipment

NEXTLINK's equipment to another Co-Provider's equipment Use of the SPOT frame by NEXTLINK shall only be required when NEXTLINK is combining a switching component provided by USWC with other USWC-provided unbundled Network Elements to replicate a USWC finished service.

8.5.1.2 Unbundled Loops include the facilities between the USWC distribution frame up to and including USWC's NID located at NEXTLINK's end user premises. The connection between the distribution frame and NEXTLINK facilities may be accomplished by ordering the applicable EICT.

Loops will be provided by USWC in accordance with the specifications, interfaces and parameters described in generally accepted industry standards and, where conditioned if necessary, and at the appropriate charge, will allow NEXTLINK to provide the following types of loops: USWC's obligation is to provide and maintain Unbundled Loops in accordance with such specifications, interfaces and parameters.

USWC does not warrant that Unbundled Loops are compatible with any specific facilities or equipment or can be used for any particular purpose or service that do not comply with the appropriate technical reference publication. Transmission characteristics may vary depending on the distance between NEXTLINK's end user and USWC's end office and may vary due to characteristics inherent in the physical network. USWC, in order to properly maintain and modernize the network, may make necessary modifications and changes to the Network Elements in its network on an as needed basis. Such changes may result in minor changes to transmission parameters. Any such changes that may affect network interoperability require advance notice pursuant to the Notice of Changes section of this Agreement.

adopted.

EXTENDED LOOP

A. Background

An extended loop is an extension of an ordinary voice grade loop over a dedicated voice grade interoffice transmission channel. Nextlink intends to use extended loops to provide competitive services to customers connected to USWC central offices where Nextlink is not collocated.

B. Positions of the Parties

1. Technical Feasibility

There is no serious issue as to the technical feasibility of Nextlink's proposal.

2. Legal Requirements

8.6.3.2 The Loop Concentrator/Multiplexer shall provide an analog voice frequency copper twisted pair equivalent at the SPOT bay or EICT (at NEXTLINK's request) at the USWC Central Office interface at the serving wire center.

USWC's Position: USWC argues that we should reject Nextlink's suggested language because ILECs are not required to combine UNE's by the plain language of 47 USC. § 251(c)(3),¹⁸ which places the burden of connecting UNEs upon a requesting carrier.

USWC claims support from the Eighth Circuit's decision in *Iowa Utilities Bd.*, in which decision, the Eighth Circuit addressed the validity of 47 C.F.R. § 51.315(c)-(f), which required an ILEC "[u]pon request, . . . to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the [ILEC's] network." 47 C.F.R. § 51.315(c). The court vacated these regulations, holding that 47 USC 251(c)(3) "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." *Id.* at 813.

USWC argues that since this portion of the Eighth Circuit's decision was not appealed to the Supreme Court, these regulations remain invalid.

USWC also claims support from the U.S. Supreme Court's decision in *AT&T Corp. v Iowa Utilities Bd.*, 1999 WL 24568 (Jan. 25, 1999), in which decision, the Court addressed the validity of 47 C.F.R. § 51.315(b), which prohibits an ILEC from separating

¹⁸-The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service. *Id.*

network elements that are currently combined. Reversing the Eighth Circuit, the Court held that Rule 315(b) was a reasonable interpretation of 47 U.S.C. § 251(c)(3) because Rule 315(b) “is aimed at preventing [ILECs] from disconnecting previously connected elements, over the objections of the requesting carrier . . . just to impose wasteful reconnection costs on new entrants.” *Id.* at 11.

USWC argues that by upholding Rule 315(b), the Court implicitly recognized that an ILEC cannot be forced to connect otherwise unconnected UNEs. If this were not the case, Rule 315(b) would not be a reasonable interpretation of 251(c)(3) because the rule would be redundant, *i.e.*, if a requesting carrier could force an ILEC to combine UNEs, then the requesting carrier would not need Rule 315(b) proscribing the separation of currently combined UNEs.

USWC asserts that it is willing to provide access to certain UNEs, but it is under no legal obligation to connect them, as would be required by Nexlink’s proposal.

As a further argument, USWC asserts that providing Nextlink with access to an unbundled loop in a central office in which the loop is not located is not required by the Act. Section 251(c)(3) requires that ILECs provide requesting carriers access to UNEs at any “technically feasible point.” 47 U.S.C. § 251(c). USWC argues that Implicit in this statute is the limitation that access only must be provided at places in the network where the UNE is actually located. According to the Eighth Circuit, section 251(c) “[b]y its very terms . . . only indicates *where* unbundled access may occur.” Iowa Utilities Bd., 120 F.3d at 810. The Supreme Court agreed with the Eighth Circuit’s decision that providing access at any “technically feasible point” refers to a technically feasible location, not to technically feasible access, as originally

interpreted by the FCC. Because the loop element to which Nextlink wants access for an expanded loop is located in a central office in which Nextlink is not collocated, there is no technically feasible location for access.

Finally, on policy grounds, USWC argues that requiring requesting carriers to bear the burden of combining otherwise non-combined UNEs makes sense. USWC asserts that extended loops are a finished service—known as a “private line service” or “FX service”—which U S WEST assembles for its own customers. Loops and dedicated interoffice transports are not elements currently combined in USWC’s network. Accordingly, argues USWC, Nextlink’s demand for an extended loop is actually a demand to purchase a finished service at TELRIC prices.

Nevertheless, argues USWC, denying Nextlink’s demand to force US WEST to provide it extended loops does not preclude Nextlink from serving potential customers in areas in which it is not currently collocated. Instead, it merely forces Nextlink to pay its own way without requiring USWC to subsidize it. Nextlink has a choice among various options. One option is to physically collocate in the central office in the area in which it desires to serve. This need not require Nextlink to make a substantial investment in a central office from which it serves only a few customers; Nextlink could request a SPOT collocation (or similar arrangement). Another option may be to “virtually” collocate in the central office. Indeed, the FCC has recognized that “virtual” collocation is an acceptable and less expensive alternative available to CLECs that want access to unbundled elements, but do not wish to incur the cost of physically collocating in an ILEC’s various central offices. A third option is for Nextlink to

purchase extended loops from USWC as a finished service, discounted by the costs USWC avoids by selling the retail service to Nextlink at wholesale rather than at retail to end user customers.

Nextlink's position: Nextlink argues that requiring USWC to make the extended loop available to Nextlink will immediately promote more widespread competition in Utah by increasing the number of customers to whom Nextlink can offer a competitive service. Nextlink represents that it intends to provide service primarily through its own facilities, but that it cannot replicate USWC's local network. Use of extended loops, however, would make it feasible for Nextlink to compete for customers even where it will only serve a few customers within the serving area of a USWC central office.

Nextlink asserts that all that is required of USWC to provide Nextlink with access to an extended loop is a simple cross connection, an activity that USWC has performed thousands of times. There is no significant difference between the cross connections used to provide an extended loop and the cross connection used to provide an unbundled loop in an office where a CLEC is collocated.

Nextlink further argues that FCC rules require USWC to provide cross connect facilities where needed, and asserts that Bell Atlantic has offered to provide extended loops to Nextlink and other CLECs for some time.

Nextlink asserts that other state commissions have imposed just such a cross connect requirement, including Oregon, Colorado and Iowa.

Nextlink also argues that this Commission also has the independent authority to

require that USWC make the connections necessary to provide extended loops. The Federal Act expressly contemplates that state commissions will be able to continue to carry out state law, as long as it is not inconsistent with the purposes of the 1996 Act. Utah law, in turn, requires that U S WEST provide “access to . . . its essential facilities . . . on terms and conditions, including price, no less favorable those the telecommunications company provides to itself and its affiliates.” Utah Code Ann. § 54-8b-2.2(1)(b)(ii). The legislature further “encourage[s] the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state” and “by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis.” Utah Code § 54-8b-1.1(3) & (6). Enabling competitors to access unbundled loops from USWC central offices in which they are not currently collocated will immediately provide greater opportunity for customer choice throughout a much wider area of the state. The Commission clearly has authority under state law to order USWC to provide extended loops to Nextlink to promote the development of competition in Utah.

C. Discussion

As noted above, we are not overly concerned whether the existing FCC rules, or any part of them, are technically in effect. We believe Rule 315(d)¹⁹ is good law, consistent with the pro-competitive aims of the Federal Act, and consistent with Utah law. We agree with Nextlink that we are not precluded by the Federal Act from applying our own law consistent with

¹⁹47 CFR § 51.315(d).

the Federal Act. In previous cases involving AT&T and MCI, we required USWC to furnish bundled elements including local transport.²⁰ We see no reason advanced by USWC to recede from that position.

Accordingly, we adopt Nextlink's language governing this subject matter.²¹

²⁰Report and Order, Dockets No's 96-087-03 and 96-095-01 (PSC Utah 1998).

²¹ 8.1.3 USWC will not restrict the types of Telecommunications Services NEXTLINK may offer through unbundled elements, nor will it restrict NEXTLINK from combining elements with any technically compatible equipment NEXTLINK own. USWC will provide NEXTLINK with the same features, functions and capabilities of a particular element that USWC provides to itself, so that NEXTLINK can provide any Telecommunications

Services that can be offered by means of the element. USWC shall provide Private Lines for single channeled transport from NEXTLINK collocated space to USWC end offices. NEXTLINK may order and USWC shall provision unbundled Network Elements either individually or in any combination on a single order. Network Elements ordered as combined shall be provisioned as combined.

USWC shall offer each Network Element individually and in combinations with any other Network Element or Network Elements in order to permit NEXTLINK to combine such Network Element or Network Elements obtained from USWC or with network components provided by itself or by third parties to provide Telecommunications Services to its subscribers. NEXTLINK may purchase unbundled Network Elements without restrictions as to how NEXTLINK may rebundle those elements.

8.2.2.1 Dedicated Transport is an interoffice transmission path between NEXTLINK-designated locations to which NEXTLINK is granted exclusive use. Such locations may include USWC central offices, NEXTLINK network locations, other carrier network locations, or subscriber premises. USWC shall offer Dedicated Transport in each of the following manners:

8.2.2.1.1 as capacity on a partitioned facility

8.2.2.1.2 as a circuit (e.g., DS-1, DS-3, STS-1) dedicated to NEXTLINK; and

8.2.2.1.3 as a system (i.e., the equipment and facilities used to provide Dedicated Transport such as SONET ring) dedicated to NEXTLINK.

8.2.2.2 "DS0/DS1/DS3 Service" is a channel which enables NEXTLINK, when it is physically collocated in a given USWC central office, to access unbundled links served from another USWC central office. Upon NEXTLINK's request, USWC shall provide transport and loops, including, if necessary, multiplexing, cross-connects and any other necessary facilities to NEXTLINK at USWC's central offices where NEXTLINK is not collocated. The unbundled transport and loops shall be provisioned at the DS-0, DS-1 or DS-3 level at

NEXTLINK ACCESS TO USWC AIN TRIGGERS

A. Background

NEXTLINK's request. USWC shall provide this service to NEXTLINK at the Commission-approved rates for each individual network component involved.

The Advanced Intelligent Network (AIN) is a network architecture which uses the SS7 network and network databases outside of a switch to manage the processing and routing of telephone calls. Rather than having a database resident solely in one switch or computer, AIN databases and the necessary tools to manage them are distributed throughout the network.²²

The use of AIN supports rapid introduction of new capabilities throughout networks and allows considerable flexibility to provide customized services. AIN provides support for an array of basic and advanced telecommunications services, including local number portability, such as “Single Number Services” which provide customers with one number, allowing callers to locate the customer wherever she or he may be. AIN can also be used to provide voice-activated services which allow customers to place their calls orally.²³

In an AIN architecture, a switch is operated with software which allows carriers to create “triggers.” These interact with AIN databases to provide AIN-based services to subscribers. Triggers can be created to respond to specific events (referred to as “call states”) in the progress of a telephone call. For example, picking up the phone is a call state, known as “off-

²²Baxter at 11.

²³*Ibid.*

hook,” to which carriers can assign an AIN trigger.²⁴ Dialing and collecting digits in the process of making a call is another call state to which a trigger can be assigned. Moreover, Triggers can be customized for each customer.²⁵

²⁴In terms of the Administrative Law Judge’s understanding, as an amateur computer programmer, of the concept, AIN triggers appear to function analogously to software interrupts under the MS DOS® PC operating system.

²⁵Baxter at 12.

Depending on which AIN service is deployed, a given trigger suspends the progress of the call in a specific call state allowing the switch to interact with AIN databases, which in turn provide the switch with additional call processing information.²⁶

Specifically, the trigger sends a query to a Service Control Point (SCP). The information furnished through the SCP can range from basic call connect and disconnect functions to sophisticated interactions, such as enabling the customer to update her or his call routing information “on the fly,” endowing the customer with a flexible call-forwarding service.²⁷

Under its proposal, Nextlink would not use direct access to USWC’s switch, but would instead use USWC’s normal ordering and provisioning processes to request the use of specific AIN triggers. Nextlink, as an interim method, has proposed to make modifications to the Local Service Request (LSR) form or the Access Service Request (ASR) form to provide USWC the necessary provisioning information.²⁸

In the case of service to a specific customer, Nextlink would send an order to

²⁶*Ibid.*

²⁷*Ibid.*

²⁸*Ibid.*

USWC requesting USWC to provision specific AIN triggers on that customer's subscriber line.

USWC would then process that order, performing the necessary provisioning at its switch.²⁹

²⁹*Ibid.*

Under Nextlink's proposal, once the appropriate AIN trigger has been provisioned on the customer's line, the USWC switch would then recognize that a call originating from that line requires the USWC switch to launch a query to the Nextlink network for additional call processing information. The Nextlink SCP would receive the query from the USWC switch and return a response, providing the call processing information necessary to perform the AIN service requested by Nextlink, to the USWC switch.³⁰

One of the primary services Nextlink proposes to provide via AIN triggers is voice-actuated information retrieval, such as a list of calls, stock quotes, voice mail, etc. Nextlink could even provide such a voice-actuated service to USWC customers by the use of a special dialing code.³¹

B. Positions of the Parties

1. Technical Feasibility

USWC's Position: USWC emphasizes that Nextlink wants access to AIN triggers so that it can connect its SCP (i.e. database) to the U S WEST signaling system. USWC argues that neither access to AIN triggers nor interconnection of a third-party SCP with an incumbent LEC's signaling system is technically feasible at this time.

USWC asserts that the FCC has already considered the subject matter and found that access to AIN triggers has not been shown to be technically feasible and, therefore, rejected

³⁰Baxter at 14.

³¹*Id.* At 14-15.

a request identical to that made by Nextlink in this arbitration, citing *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (First Report and Order). In the First Report and Order, the FCC stated:

We find that there is not enough evidence in the record to make a determination as to the technical feasibility of interconnection of third party call-related databases to the incumbent LEC's signaling system. . . . At this time, in view of this record and the record compiled in the *Intelligent Networks* docket, we cannot make a determination of the technical feasibility of such interconnection. First Report and Order.³²

Such interconnection must be made via AIN triggers.

USWC notes that although the FCC did not preempt a state commission from making its own determination, USWC insists that nothing of a technical nature has changed since the First Report and Order was issued to make such access or interconnection technically feasible, and Nextlink has failed to provide any new information to establish such feasibility. USWC also asserts that at least one other regulatory agency, the Arizona Corporation Commission, has declined to give CLECS access to the triggers.

USWC argues that here are a number of significant technical issues that prevent interconnection of Nextlink's SCP or call-related database with the USWC signaling network. One technical issue is the lack of sufficient mediation between Nextlink's SCP and U S WEST's SS7. According to USWC, his lack of sufficient mediation would leave USWC's switch, and potentially the entire network, vulnerable to a multitude of harms. USWC would have no control

³² ¶¶ 501 and 502.

over the data, information or protocol used by Nextlink to populate its call-related database. Should that data, information or protocol be incomplete, inaccurate, incompatible or otherwise defective, it would traverse the U S WEST signaling system and enter the central office switch. The end result could be disastrous.³³

USWC argues further that Nextlink has not demonstrated that any system to filter out corrupted data exists or is in the offing, despite its claim that such a system could solve any corruption problems.

USWC argues that a further problem derives from the limitation that a switch trigger can only be assigned to one provider. USWC offers as an example the Off Hook Immediate (OHI) trigger, which is activated when a customer picks up the receiver, and the impact on reliable 911 service. If the OHI trigger were to be assigned to Nextlink, a query would be sent to Nextlink's SCP (or wherever Nextlink directed) for call processing instructions whenever the customer picked up the receiver. USWC, it claims, would not be able to provide reliable access to 911 emergency services, since it would no longer be providing call processing instructions.

Finally, USWC argues that there are also significant problems to be anticipated with feature interaction. If two different carriers are providing the same customer a different set

³³Having himself blown up more than a few PC operating systems with corrupted data structures, the Administrative Law Judge can only say "amen."

of features, how does one ensure that the various features will be compatible; even if compatible, how are the features prioritized? Nextlink's proposal would leave many of these important practical considerations unresolved, since USWC would no longer have full control over its network.

Nextlink's position: Nextlink argues that In implementing any AIN-based service, Nextlink would work directly with U S WEST to ensure that the service would work as intended without negative impact on either carrier's network. According to Nextlink, this would not differ from similar testing procedures employed before the use of other network elements to serve customers. Currently, Nextlink and USWC must work together to implement many projects involving interconnection or access to unbundled network elements. Neither carrier would, for example, move forward to implement permanent number portability if it posed a threat to either carrier's network.

_____ Nextlink has no interest in negatively impacting either carrier's network because it would harm Nextlink's reputation with consumers. If USWC believed that the implementation of a specific Nextlink AIN-based service would create problems, there would be multiple opportunities for USWC and Nextlink to resolve such issues during the testing and implementation of the service. Because Nextlink is not interested in providing services that would negatively impact anyone's customers, USWC would always have an opportunity to demonstrate that a specific request for an AIN trigger would not

be technically feasible.

Nextlink asserts that AIN triggers are, like unbundled loops, a bottleneck facility without which Nextlink cannot offer competitive AIN alternatives to Utah consumers. Nextlink argues that the FCC has already recognized that "AIN-based services are important to a new entrant's ability to compete effectively for customers with the incumbent LEC and in developing new business by introducing new AIN-based services." 11 FCC Rcd 15749. Nextlink, with access to AIN triggers, will be able to compete with U S WEST to provide new and innovative services. If the Commission denies Nextlink's request, only U S WEST will have the ability to provide AIN-based services to the vast majority of Utah consumers.

C. Discussion

Access to the AIN triggers is the single most vexed issue in this arbitration proceeding. While we are impressed by Nextlink's proposed voice-actuated service, we are unable to bring ourselves to open up USWC's network to alien control to the extent desired by Nextlink. Obviously, USWC is making, once again, a strong appeal to FUD. However, in this context, we must agree that USWC's concerns are well-founded. Our conclusion is buttressed by the FCC's action in refusing to open the door Nextlink seeks and referring the matter to further consideration in a pending rulemaking proceeding.³⁴ We are unwilling, at this juncture, to make the Utah network the test bed for Nextlink's proposed service. We credit fully Nextlink's good

³⁴"On January 30, 1998, the Commission released the Computer III Further Notice, which proposes to revise the safeguards under which the Bell Operating Companies provide information services in light of the requirements of the 1996 Act." Order, CC Docket 91-346 (1998).

faith in advancing the proposal, and the confidence of Nextlink's technical personnel in the feasibility of the proposal. However, we are unwilling to subject Utah customers to the potentially disastrous results of what could be unwarranted *hubris*.

We are unhappily aware that in reaching this conclusion we are severely attenuating USWC's incentive to work with Nextlink to solve the network security issues raised by USWC. Consequently, all customers in USWC's service area stand to suffer the loss of potentially valuable new AIN-based services.

Accordingly, we hereby serve notice that we expect USWC to work cooperatively (and without requiring Nextlink to jump through unnecessary procedural hoops) with Nextlink to solve the technical problems raised by USWC, or to allay the concerns if they are in fact chimerical. Absent such efforts, should this issue re-emerge in a subsequent arbitration proceeding, we may not be so disposed to accede to USWC's concerns. But for now, language omitting any requirement that USWC afford access to AIN triggers should be adopted.

USWC'S PROVIDING RATES ON CUSTOMER SERVICE REQUEST

A. Background

In the past, USWC has, at a customer's request, furnished Nextlink a complete list of charges for USWC service. USWC now proposes to discontinue this practice, and Nextlink is insistent that it continue. Nextlink has been accessing the information through USWC's Operations Support System (OSS). It does so through a computer connection known as interconnection mediated access or IMA. The way it advises US WEST that it has a customer Letter of Authorization (LOA) to disclose customer billing information is by checking a box on a

computer screen. When Nextlink accesses a customer service record in this manner, USWC does not receive an LOA from the customer.³⁵

B. Positions of the Parties

1. Technical Feasibility

There is no issue of technical feasibility, although USWC claims that compliance would entail enhanced expense, for which it would not be compensated, and Nextlink maintains that, absent compliance, it would have a corresponding expense.

2. Legal Requirements

USWC Position: USWC asserts that, In response to a request for a customer service record, it is willing to agree, subject to the terms of a LOA from the customer, to provide a listing of the services and features USWC is currently providing to the customer. USWC asserts further that in addition, through a Service Availability Inquiry, Nextlink may obtain detailed information by wire center of what services are available and their recurring and non-recurring rates. According to USWC, it would have to bear a significant administrative burden in order to meet Nextlink's request in the form Nextlink wants it. USWC particularly objects because it would entail disclosure of rate information for customers under competitive contracts.

USWC argues that it is not obligated under the Act to provide the information Nextlink seeks in the form Nextlink wants it. In addition, competitive contracts are filed with the

³⁵Testimony of Laura L. Scholl, Transcript 273-274.

Commission under protective order. Even if a customer knowingly waives the confidentiality of the contract, it contains information that is competitively sensitive from USWC's perspective and that USWC should not be required to disclose. USWC argues from a fairness perspective that while Nextlink regards its own competitive contracts as competitively sensitive and proprietary, it wants to deprive USWC of the ability to treat this information the same way. Finally, argues USWC, the Federal act contemplates that Nextlink will gain access to customer service records through USWC's OSS. That system does not have the information in the form Nextlink wants it, and USWC is not required to design its OSS according to Nextlink's specifications.

USWC notes that if a customer wishes Nextlink to have access to its rates, it is possible that it can provide the appropriate portions of its bill to Nextlink as easily as it provides a LOA. Nextlink's form LOA allows Nextlink to look at all customer account information.

USWC argues that it is not obligated under the Federal Act to provide the information on customer service records in the form Nextlink wants it. With respect to access to customer service information, the Act contains only two requirements. The first is that "[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of . . . other telecommunications carriers . . . and customers ." 47 USC. § 222(a).

USWC acknowledges an obligation to disclose information contained in a customer's bill pertaining to telephone exchange or toll service to the customer or a designated representative of the customer upon receipt of an affirmative written request from the customer. 47 USC. § 222(c)(2) and (f)(1)(B). However, USWC disputes that obligation means that USWC is required to provide Nextlink with the information it wants in the form it wants it simply

because Nextlink represents to USWC on a computer screen that it has an LOA that authorizes release of any and all customer information. In the slamming context, the FCC has required verification, in addition to an LOA, to ensure that the customer's wishes are accurately represented. 47 CFR. §§ 64. 1000. In addition, argues USWC, Nextlink failed to note the requirement of subsection 222(b) which provides that:

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, *and shall not use such information for its own marketing efforts*. 47 U.S.C. § 222(b) (emphasis added)

There is no dispute that Nextlink wants this information to use in its own marketing efforts. This use of proprietary information is expressly prohibited by the Act.

USWC also argues that there is nothing in state law requiring USWC to disclose the terms of competitive contracts to Nextlink just because a customer provides a LOA. Contrariwise, since competitive contracts are filed under protective order, they may only be publicly disclosed if the providing party USWC stipulates to their disclosure, or, on request of one of the parties to the docket, this Commission orders that they are not confidential. For sound competitive reasons, USWC is not willing to stipulate that this competitively sensitive information may be released.

USWC notes that If a customer wishes to share some or all of its rates for services and features with Nextlink, it is free to do so. 47 U.S.C. § 222(b) does not preclude a customer from releasing its own rate information to Nextlink.

Nextlink's Position: Nextlink cites Section 222 of the Federal

Telecommunications Act, as amended, directing that common carriers furnish competitive carriers with information about customer services, rates, usage patterns and other customer proprietary network information (CPNI) upon affirmative written request by customers. 47 U.S.C. 222(c)(2) and (f)(1). Nextlink claims that the statute enables customers to authorize competitive carriers like Nextlink to obtain and analyze complex data about their current services so that customers can make informed comparisons about services and rates available from competing carriers relative to their current carrier.

Nextlink claims that until very recently, USWC cooperated in responding to customer requests authorizing Nextlink to obtain Customer Service Records (CSR) by providing not only phone numbers and service types, but also the rate elements and the rates for each individual element.

However, since early January 1999, USWC has refused to furnish rate information in its CSR's. Instead, information about rates allegedly was moved from the CSR to the preordering screen on the Service Availability Query feature on U S WEST's computerized ordering process, which, Nextlink asserts, is a far more cumbersome process from the customer's perspective, and a process, moreover, that Nextlink has not yet found will even work.

Nextlink argues that USWC's problems with re-programming its OSS systems are of its own creation in developing such systems that systematically exclude rate information which was previously furnished to Nextlink with CSR's as a matter of course. Nextlink asserts that there can be no justification for requiring Nextlink to use such a defective OSS or to reimburse USWC for the costs of decoding its OSS system which was coded expressly to

exclude Nextlink's competitive access to information it is statutorily entitled to see.

Nextlink asserts that it seeks nothing radical, but merely an order restoring the *status quo ante*, under which USWC regularly furnished complete customer rate information in response to customer service requests.

C. Discussion

We note that Nextlink does not address the effect of 47 USC § 222(b), nor does it address the issue of contracts filed with this Commission under protective order.

It may be true that having the customer provide the data Nextlink seeks is more cumbersome and time consuming than simply dialing into USWC's computer system, but that does not render the information unavailable — it only entails a greater degree of cooperation from the prospective customer. We do not conceive that puts Nextlink at an insurmountable competitive disadvantage.

The security issues raised by USWC also resonate with us. In a recent Docket, we dismissed the complaint of an interexchange carrier against USWC for refusing to change a customer's designated primary long distance carrier without customer verification if that customer had a PIC freeze on her or his service.³⁶ It seems to us that *a fortiori* verification should be required when sensitive customer information is involved..

In sum, we believe the Federal Act prohibits the unfettered rate information

³⁶In the Matter of the Complaint of Telsave, Inc., v. USWC, Docket No. 98-049-20 (PSC Utah 1998).

access sought by Nextlink, as does our own practice in issuing protective orders for individual contracts. Moreover, we believe the better public policy is to leave control of such information in the hands of the consumer. We believe USWC's position on this issue should be adopted; however we have found no language in the contract draft on file with this Commission implementing it. If the parties are unable to agree on language consistent with this arbitration award, they may submit their proposals for Commission approval.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the arbitration award be, and it is, made in favor of Nextlink Utah, Inc., on the issues of alternate route SS7 access; extended loop access; and SPOT frame access; and that the arbitration award be, and it is, made in favor of U S West Communications, Inc., on the issues of AIN trigger access and access to Customer rate information.

DATED at Salt Lake City, Utah, this 23rd day of March, 1999.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 23rd day of March, 1999, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

DOCKET NO. 98-2208-03

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Attest:

/s/ Julie Orchard
Commission Secretary